

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

INTELLECT WIRELESS, INC.,)	
)	
Plaintiff,)	Civil Action No. 08-C-1215
)	
v.)	Honorable Joan B. Gottschall
)	Magistrate Judge Susan E. Cox
)	
T-MOBILE USA, INC., UNITED)	
STATES CELLULAR CORP.,)	
VIRGIN MOBILE USA, L.P., HELIO,)	JURY DEMAND
INC.)	
)	
Defendants.)	

**PLAINTIFF'S RESPONSE TO
VIRGIN MOBILE USA, L.P.'S COUNTERCLAIMS**

Plaintiff Intellect Wireless, Inc. ("Intellect Wireless") hereby responds to Virgin Mobile USA, L.P.'s ("Virgin") Counterclaims, served on April 24, 2008, as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over the following Counterclaims under 28 U.S.C. §§ 1331 and 1338(a). This Court has personal jurisdiction over Intellect Wireless.

Response:

Admitted.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), and as a result of Intellect Wireless's commencement of this action in this district.

Response:

Admitted.

The Parties

3. Counterclaim-Plaintiff Virgin Mobile is a Limited Partnership organized and existing under the laws of the State of Delaware with its principal place of business in

Warren, New Jersey.

Response:

Admitted.

4. On information and belief, Counterclaim-Defendant Intellect Wireless is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Fort Worth Texas.

Response:

Admitted that Intellect Wireless is a Texas corporation with an office in Fort Worth, Texas; otherwise denied.

First Counterclaim

(Declaratory Judgment – Non-Infringement of the ‘210 Patent)

5. Virgin Mobile repeats and realleges paragraphs 1 through 4, as if fully set forth herein.

Response:

Intellect wireless incorporates and realleges its responses to paragraphs 1-4 as if fully set forth herein.

6. Intellect Wireless alleges in its Complaint that it owns all right, title, and interest in and to the ‘210 Patent.

Response:

Admitted that Intellect Wireless own all right, title and interest in the ‘210 Patent.

7. Intellect Wireless, by its Complaint, has asserted that Virgin Mobile has directly and contributorily infringed and induced others to infringe the ‘210 Patent.

Response:

Admitted that Virgin Mobile has infringed the ‘210 Patent.

8. Virgin Mobile has not infringed and is not infringing any of the claims of the ‘210 Patent. Virgin Mobile has not contributorily infringed, is not contributorily infringing, has not actively induced infringement, and is not actively inducing others to infringe any

of the claims of the '210 Patent.

Response:

Denied.

9. There exists, therefore, an actual controversy between Intellect Wireless and Virgin Mobile with respect to infringement of the '210 Patent.

Response:

Admitted that Virgin Mobile is infringing the '210 patent and there is an actual controversy between Intellect Wireless and Virgin Mobile with respect to infringement of the '210 Patent.

10. Virgin Mobile seeks a judicial declaration that it does not infringe or contributorily infringe, nor has it induced infringement of the '210 Patent.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

Second Counterclaim

(Declaratory Judgment – Non-Infringement of the '076 Patent)

11. Virgin Mobile repeats and realleges paragraphs 1 through 10, as if fully set forth herein.

Response:

Intellect wireless incorporates and realleges its responses to paragraphs 1-10 as if fully set forth herein.

12. Intellect Wireless alleges in its Complaint that it owns all right, title, and interest in and to the '076 Patent.

Response:

Admitted that Intellect Wireless owns all right, title and interest in the '076 Patent.

13. Intellect Wireless, by its Complaint, has asserted that Virgin Mobile has directly and contributorily infringed and induced others to infringe the '076 Patent.

Response:

Admitted that Virgin Mobile has infringed the '076 Patent.

14. Virgin Mobile has not infringed and is not infringing any of the claims of the '076 Patent. Virgin Mobile has not contributorily infringed, is not contributorily infringing, has not actively induced infringement, and is not actively inducing others to infringe any of the claims of the '076 Patent.

Response:

Denied.

15. There exists, therefore, an actual controversy between Intellect Wireless and Virgin Mobile with respect to infringement of the '076 Patent.

Response:

Admitted that Virgin Mobile is infringing the '076 patent and there is an actual controversy between Intellect Wireless and Virgin Mobile with respect to infringement of the '076 Patent.

16. Virgin Mobile seeks a judicial declaration that it does not infringe or contributorily infringe, nor has it induced infringement of the '076 Patent.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

Third Counterclaim

(Declaratory Judgment – Non-Infringement of the '186 Patent)

17. Virgin Mobile repeats and realleges paragraphs 1 through 16, as if fully set forth herein.

Response:

Intellect wireless incorporates and realleges its responses to paragraphs 1-16 as

if fully set forth herein.

18. Intellect Wireless alleges in its Complaint that it owns all right, title, and interest in and to the '186 Patent.

Response:

Admitted that Intellect Wireless owns all right, title and interest in the '186 Patent.

19. Intellect Wireless, by its Complaint, has asserted that Virgin Mobile has directly and contributorily infringed and induced others to infringe the '186 Patent.

Response:

Admitted that Virgin Mobile has infringed the '186 Patent.

20. Virgin Mobile has not infringed and is not infringing any of the claims of the '186 Patent. Virgin Mobile has not contributorily infringed, is not contributorily infringing, has not actively induced infringement, and is not actively including others to infringe any of the claims of the '186 Patent.

Response:

Denied.

21. There exists, therefore, an actual controversy between Intellect Wireless and Virgin Mobile with respect to infringement of the '186 Patent.

Response:

Admitted that Virgin Mobile has infringed the '186 Patent and that an actual controversy exists between Intellect Wireless and Virgin Mobile with respect to infringement of the '186 Patent.

22. Virgin Mobile seeks a judicial declaration that it does not infringe or contributorily infringe, nor has it induced infringement of the '186 Patent.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

Fourth Counterclaim

(Declaratory Judgment – Invalidity of the '210 Patent)

23. Virgin Mobile repeats and realleges paragraph 1 through 22, as if fully set forth herein.

Response:

Intellect Wireless incorporates and realleges its responses to paragraphs 1-22 as if fully set forth herein.

24. The '210 Patent is invalid and void for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including without limitation, at least Sections 102, 103 and 112 thereof.

Response:

Denied.

25. Virgin Mobile seeks a judicial declaration that the '210 Patent is invalid.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

Fifth Counterclaim

(Declaratory Judgment – Invalidity of the '076 Patent)

26. Virgin Mobile repeats and realleges paragraphs 1 through 25, as if fully set forth herein.

Response:

Intellect wireless incorporates and realleges its responses to paragraphs 1-25 as if fully set forth herein.

27. The '076 Patent is invalid and void for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including without limitation, at least Sections 102, 103 and 112 thereof.

Response:

Denied.

28. Virgin Mobile seeks a judicial declaration that the '076 Patent is invalid.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

Sixth Counterclaim

(Declaratory Judgment – Invalidity of the '186 Patent)

29. Virgin Mobile repeats and realleges paragraphs 1 through 28, as if fully set forth herein.

Response:

Intellect wireless incorporates and realleges its responses to paragraphs 1-28 as if fully set forth herein.

30. The '186 Patent is invalid and void for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including without limitation, at least Sections 102, 103 and 112 thereof.

Response:

Denied.

31. Virgin Mobile seeks a judicial declaration that the '186 Patent is invalid.

Response:

Admitted that Virgin Mobile has purported to plead such a claim; otherwise denied.

ADDITIONAL DEFENSES

1. Virgin Mobile's pleading fails to state claims upon which relief can be granted, i.e., claims for noninfringement and invalidity of the patents in suit.

2. Virgin Mobile's pleading fails to state a justiciable controversy on any issue of noninfringement or invalidity.

PRAYER FOR RELIEF

WHEREFORE, Intellect Wireless requests judgment in its favor on Virgin Mobile's Counterclaims, including declaratory judgment that the patents in suit are not infringed and not invalid, an award of its costs, fees and expenses as provided by law, and any other and further relief to which Intellect Wireless may be entitled or the Court or a jury may award.

JURY DEMAND

Intellect Wireless hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ David J. Mahalek

Paul K. Vickrey

Paul C. Gibbons

David J. Mahalek

NIRO, SCAVONE, HALLER & NIRO

181 West Madison Street, Suite 4600

Chicago, IL 60602

(312) 236-0733

Fax: (312) 236-3137

***Attorneys for Plaintiff,
Intellect Wireless, Inc.***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFF'S RESPONSE TO VIRGIN MOBILE USA, L.P.'S COUNTERCLAIMS** was electronically filed with the Clerk of Court using CM/ECF system, which will send notification of such filing to the following e-mail addresses on May 7, 2008 by:

Thomas L. Duston (tduston@marshallip.com)
Margaret Lynn Begalle (mbegalle@marshallip.com)
Marshall, Gerstein & Borun
233 South Wacker Drive
6300 Sears Tower
Chicago, IL 60606
(312) 474-6300
Fax: (312) 474-0448

Josh A. Krevitt (jkrevitt@gibsondunn.com)
Charles J. Boudreau (cboundrea@gibsondunn.com)
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
Fax: (212) 351-4035
Attorneys for T-Mobile USA, Inc. and Helio, Inc.

Richard J. O'Brien (robrien@sidley.com)
Nabeel Khan (nkhan@sidley.com)
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000
Fax: (312) 853-7036
Attorneys for United States Cellular Corporation

Christina M. Tchen (tina.tchen@skadden.com)
Michael N. Turnage Young
(michael.turnage.young@skadden.com)
Skadden, Arps, Slate, Meagher & Flom, LLP
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700/Fax: (312) 407-0411
Attorneys for Virgin Mobile USA, L.P.

/s/ David J. Mahalek